

RKY07MUL

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT (LANDSCAPING)
NAME OF CONTRACTOR:	ROCKY MOUNTAIN PRODUCTION SERVICES, LLC.
PROJECT/SUBDIVISION:	MULTI-CHEM
ADDRESS:	731 23 ¼ ROAD / 2308 LOGOS DRIVE
TAX PARCEL NO:	2701-323-08-007
FILE #:	CUP-2006-265
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2007
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

**DEVELOPMENT IMPROVEMENTS AGREEMENT**

*Landscaping only*

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Rocky Mt. Real. Inv. LLC ("Developer") and the **City of Grand Junction, Colorado** ("City").

For valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement shall be the date that it is signed by the Public Works & Planning Director, which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

**RECITALS**

The Developer seeks permission to develop property, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as 6 751 234 / 2308 Hogus Dr has been reviewed and approved under Planning file # Cup 5006 - 265 ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

**DEVELOPER'S OBLIGATION**

3. **Improvements:** The Developer shall design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than litigation, this agreement and/or the approved development plan. Making

disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys'/ litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee. The Developer is required to post security in an amount of \$ 49,834.00 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash  Letter of Credit (LOC)  Disbursement Agreement

5. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ N/A (Line G2, Exhibit B, City Security).

6b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City.

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: June 11, 2007  
Completion Date: July 30, 2007

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after the Effective Date.

9. **Notice of Defect:** The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. **Acceptance of Improvements:** The City shall not accept and/or approve any or all of the Improvements until the Developer presents a document or documents for the benefit of the City showing that the Developer owns the Improvements in fee simple, or as accepted by the City Attorney, and that there are no liens, encumbrances or other restrictions on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. **Reduction of Security:** Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of \$ N/A (Line G1, Exhibit B, Total Improvement Costs).

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on

the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

**12. Use of Proceeds:** The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

**13. Events of Default:** The following conditions, occurrences or actions shall constitute a default by the Developer:

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer. In such event the City may immediately declare a default without prior notification to the Developer;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

**14. Measure of Damages:** The measure of damages for breach of this Agreement by the Developer shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. Expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements.

For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

**15. City's Rights Upon Default:** When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. The Developer grants to the City, its successors, assigns, agents, contractors and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

**16. Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns ("City") harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with or on account of the performance or non-performance of work at the Property and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b. The Developer is not an agent, partner, joint venturer or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. If relief is awarded to both parties the attorney's fees may be equitably divided between the parties by the decision maker.

20. **Vested Rights:** This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement or to transfer ownership of the Property being developed.

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire Agreement between the parties. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

22. **Third Party Rights:** No person or entity who or which is not a party to this Agreement shall have any right of action under or be a beneficiary of this Agreement.

23. **Time:** For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision. The

rights of the parties shall be construed as if the part, term or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld but any unapproved assignment is void.

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement shall be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: Rocky Mt. Prod. Svc., LLC Name -Developer/Company  
2304 Hayes Dr. Address (Street and Mailing)  
Grand St. Colo. 81505  
Attn: Joe Greene Mgr City, State & Zip Code  
(970) 257-0488 & 257-0480 Telephone and Fax Numbers  
( ) ↑ Ph. Fax  
put@cmhvr.com E-mail

Cc:



If to City: Office of the City Attorney  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

Cc: Public Works & Planning Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit D) in the records of the Mesa County Clerk and Recorder's Office. The Developer may, at his/her/its option record the entire agreement.

28. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. **Liability before Acceptance:** The City shall have no responsibility or liability with respect to any street or other Improvement(s), notwithstanding the use of the same by the public, unless the street or other Improvement shall have received Acceptance by the City.

30a. If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes to the City Engineer as-built drawings in reproducible form, blue line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification;

(ii) provides written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon in and under which the Improvement(s)

have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;  
(iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and  
(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

*Rocky Mountain Production Services, Llc.*

By:

*X Joe Greene By, Por = lured*  
\_\_\_\_\_  
Developer Date

*X Joe Greene mgr.*  
\_\_\_\_\_  
Name (printed)

Corporate Attest:

\_\_\_\_\_  
Name Date

City of Grand Junction  
250 North Fifth Street  
Grand Junction, CO 81501

*Joni V. Bowen* *6-7-07*  
\_\_\_\_\_  
Public Works & Planning Dept. Date

5/15/2007

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY.  
USE SINGLE SPACING WITH A ONE INCH MARGIN ON EACH SIDE.

**EXHIBIT A**

lot 1 Block 1 Interstate Comm.  
Park 5 Sec 32 T1N, R1W

**EXHIBIT B**

**IMPROVEMENTS COST ESTIMATE**

DATE: 6/6/07  
 DEVELOPMENT NAME: Multi Chem  
 LOCATION: 731 25th Rd / 2308 Hoggs  
 PRINTED NAME OF PERSON PREPARING: Pat Edwards

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>A. SANITARY SEWER</b>					
1	" PVC Sanitary Sewer Main	LF			\$ -
2	" PVC Sanitary Sewer Main	LF			\$ -
3	" PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	EA or LF			\$ -
5	Sanitary Sewer Manhole	EA			\$ -
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA			\$ -
8	Concrete Encasement	LF			\$ -
<b>Subtotal Part A Sanitary Sewer</b>					<b>\$ -</b>
<b>B. DOMESTIC WATER</b>					
1	" PVC Water Main	LF			\$ -
2	" PVC Water Main	LF			\$ -
3	" PVC Water Main	LF			\$ -
4	" Gatevalve	EA			\$ -
5	" Gatevalve	EA			\$ -
6	" Gatevalve	EA			\$ -
7	Water Services	EA or LF			\$ -
8	Connect to Existing Water Line	EA			\$ -
9	Fire Hydrant with Valve	EA			\$ -
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
<b>Subtotal Part B - Domestic Water</b>					<b>\$ -</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C1</b>	<b>STREETS</b>				
1	" PVC Utility/Irrigation sleeves	LF			\$ -
2	" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY			\$ -
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) ( " Compacted Thickness)	SY			\$ -
6	Aggregate Base Course (Class 6) ( " Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading ( " thick)	SY			\$ -
8	Hot Bituminous Paving, Grading ( " thick)	SY			\$ -
9	Hot Bituminous Paving, Patching ( " Thick)	SY			\$ -
10	Geotextile	SY			\$ -
11	Concrete Curb ( " Wide by " High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF			\$ -
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk ( ' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk ( ' Wide)				\$ -
16	Concrete Sidewalk ( ' Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section ( " Thick)	SY			\$ -
18	Concrete Drainage Pan ( ' Wide, " Thick)	LF			\$ -
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY			\$ -
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway ( " Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA			\$ -
26	Striping (New, Remove/Replace)	LF			\$ -
27	Street Lights	EA			\$ -
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Sleeves, " , PVC	LF			\$ -
					\$ -
					\$ -

*N/A*

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>C2 BRIDGES</b>					
1	Box Culvert Pre-Cast	LS	N/A		\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
					\$ -
					\$ -
<b>Subtotal Part C - Streets and Bridges</b>					<b>\$ -</b>
<b>D1 EARTHWORK</b>					
1	Mobilization	LS	N/A		\$ -
2	Clearing and Grubbing	AC or LS			\$ -
3	Unclassified Excavation	CY			\$ -
4	Unclassified Embankment	CY			\$ -
<b>D2 REMOVALS AND RESETTING</b>					
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>D3 EROSION CONTROL, SEEDING, AND SOIL RETENTION</b>					
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -
6	Silt Fence	LF			\$ -
7	Straw Waddles	LF			\$ -
8	Temporary Berms	LF			\$ -
9	Inlet Protection	EA			\$ -
10	Sediment Trap/Basin	EA			\$ -
11	Monthly Maintenance/Inspection	Month			\$ -
12	Watering (Dust Control)	AC or LS			\$ -
13	Temporary Irrigation				\$ -
<b>D4 STORM DRAINAGE FACILITIES</b>					
1	Finish Grading (incl. Channels, Swales, and Ponds)	CY			\$ -
2	" Storm Drain Pipe	LF			\$ -
3	" Storm Drain Pipe	LF			\$ -
4	" Storm Drain Pipe	LF			\$ -
5	" Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	" Flared End Section	EA			\$ -
8	" Flared End Section	EA			\$ -
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA			\$ -
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA			\$ -
15	Double Curb Opening Storm Drain Inlet	EA			\$ -
16	Area Storm Drain Inlet	EA			\$ -
17	Detention Area Outlet structure	EA			\$ -
18	Rip-Rap D <sub>50</sub> = "	CY			\$ -
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
<b>Subtotal Part D - Grading and Drainage</b>					<b>\$ -</b>

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>E1 IRRIGATION</b>					
1	Connect to Existing Pipe	LS			\$ -
2	" Irrigation Pipe	LF			\$ -
3	" Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
<b>E2 LANDSCAPING</b>					
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			\$ -
5	Irrigation System	LS			\$ -
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ -
9	Topsoil				\$ -
					\$ -
					\$ -
					\$ -
					\$ -
<b>Subtotal Part E - Landscaping and Irrigation</b>					<b>\$ 41,529.00</b>
<b>Subtotal Construction Costs</b>					<b>\$ 41,529.00</b>

*N/A*

*See attached contract*



Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
<b>F. Miscellaneous Items</b>					
1	Construction staking/surveying	%	2.00%	\$ -	
2	Developer's inspection cost	%		\$ -	
3	General construction supervsn	%		\$ -	
4	Quality control testing	%	2.00%	\$ -	
5	Construction traffic control	%		\$ -	
6	City inspection fees	%	0.50%	\$ -	
7	As-builts	%	2.00%	\$ -	
<b>Subtotal Part F - Miscellaneous Items</b>					<b>\$ -</b>
% = Percentage of total site construction costs <b>G. COST SUMMARY</b> 1 Total Improvement Costs \$41,529.00 2 City Security (20%) \$ 8,305.00 <hr/> 3 Total Guarantee Amount \$ 49,834.00					
<b>NOTES</b> 1. All prices shall be for items complete in place and accepted. 2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction. 3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere. 4. All concrete items shall include Aggregate Base Course where required by the drawings. 5. Fill in the pipe type for irrigation pipe and sleeves. 6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides. 7. Units can be changed if desired, simply annotate what is used. 8. Additional lines or items may be added as needed.					
Signature of Developer <u>Joe Greene</u> Date <u>6/8/07</u> (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)					
I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.					
<u>[Signature]</u> City Development Engineer Date <u>6/8/07</u> <u>[Signature]</u> Community Development Date <u>6-7-07</u>					

# Deep Creek Inc.

LANDSCAPING & IRRIGATION

DESIGN • CONSTRUCTION • MAINTENANCE

4/10/2007

Multi-Chem Facility Item	Est. Qty	Retail / Unit	ITEM Total Price	Category Total
Deciduous Trees 2"	29	\$296.45	\$8,595.67	
Deciduous Trees Total				\$8,595.67
Deciduous Shrubs # 5	200	\$40.21	\$8,041.45	
Deciduous Shrubs Total				\$8,041.45
Evergreen Shrubs # 6	60	\$48.49	\$2,906.89	
Evergreen Shrubs Total				\$2,906.89
Soil Amendment	8,663	\$0.14	\$947.62	
Soil Amendment Total				\$947.62
2" River Rock Mulch	19,960	\$0.70	\$13,974.83	
Mulch / Boulders Total				\$13,974.83
Irng. Design/As-Built GJ Pipe	1	\$5,821.84	\$5,821.84	
Irrigation - Sleeves	180	\$7.27	\$1,307.89	
Irrigation Total				\$7,129.71
Warranty Expense			\$289.00	
Other Total				\$399.06
Estimate Grand Totals:				\$41,528.00

### Alternatives and Qualifications:

- All Grades are to be within +/- 1/10" of grading plan / existing grades as applicable. Deep Creek assumes no liability for any drainage issues that result from grading. Quote excludes topsoil placement. Quote excludes fill dirt and grading. General Contractor / Owner is to provide topsoil. Quote excludes placement and grading of topsoil around building and site. Soil must be suitable for growing plants.
- Quote is valid for 60 days from Bid Date. Invoices are due and payable upon receipt. Deep Creek will charge 2% per month on invoices after 30 days from invoice date, plus reasonable attorney fees and costs of collection.
- General Contractor / Owner will provide all Irrigation Water Taps / Fees, Shut-off valves, Meters (if required). General Contractor to provide Permits and Stub outs. General Contractor / Owner is to provide power to the Controller and Pump Station locations (including meter pedestals and breakers as needed), and conduit into buildings if required. General Contractor's plumber to install backflow prevention device.
- This estimate is based on the best information available to Deep Creek. Should additional unforeseen work, material quantities, or repairs be required due to unknown conditions or site requirements, such work will be billed at \$55.00 per man hour plus parts. General Contractor / Owner to provide a materials storage area. General Contractor is to provide Temporary Sanitary Facilities. Survey staking is by GC / Owner.
- Piping and landscape installation in areas of established vegetation may cause disturbance to root systems and affect the life/viability of the plants and trees. Deep Creek makes no warranty, either implied or stated regarding plant replacement for plant mortality after such an installation.
- Deep Creek will only warranty the workmanship and materials for Plants, equipment and parts supplied and installed by Deep Creek. Deep Creek makes no warranty of any kind regarding the overall functioning of landscape not installed by Deep Creek.
- Deep Creek DOES NOT WARRANTY non-irrigated seed or plants. No warranty of any kind is expressed or implied against the growth of weeds, nor is weed control or mowing included in this quote.
- In the event large rock is encountered and trenching is not possible by chain type trench and an excavator or backhoe has to be use for this means, then a cost adjustment will need to be implemented by the hour for trenching.
- Quote only includes those items listed on quote.
- Deep Creek will tie onto existing irrigation mainline at locations noted on plans.
- In the event boring is needed for irrigation system, this will be treated by change order and bill by linear foot bases. Any boring will be considered an addition to contract.

**CONTRACT AGREEMENT**

THIS CONTRACT AGREEMENT is made on the 10th day of April 2007, by and between the

**Owner: John Folkstead  
1681 13 Road  
Loma, CO. 81524**

and the Contractor:

**DEEP CREEK, INC.  
840 23 1/2 Road  
Grand Junction, CO 81505**

A Colorado Corporation.

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Project: Multi-Chem Facility

**AGREEMENT**

The Parties agree to the following:

1. Contract Documents: The Contract documents consist of (a) this Contract Agreement; (b) the prime contract between Owner and a third party, if applicable; (c) Drawings, Specifications, and Addendums issued prior to the execution hereof and specifically endorsed by the parties. All Contract documents are made a part of this Contract and are incorporated herein.

2. Scope of Work: Contractor shall furnish all labor, materials, and equipment to perform the work of this Contract as follows: As detailed in Deep Creek, Inc. Proposal dated April 10, 2007, attached hereto, including exclusions and special items, which together, are made an integral part of this Contract.

Contractor shall not be responsible in connection with its scope of work, to provide the following, which will be the responsibility of the Owner or others: As detailed in Deep Creek, Inc. Proposal dated April 10, 2007, attached hereto.

4. Contract Sum: Owner shall pay the Contractor for Contractor's performance of this Contract the sum of: \$41,529.00 Unit prices as detailed by Schedule of Values in Deep Creek, Inc. Proposal dated April 10, 2007, and attached hereto. Deep Creek, Inc. will receive a 40% down payment prior to start of project. Note: No payment or performance bonds are required of the Contractor for this Project.

5. Attached Terms, Covenants, and Conditions: Owner and Contractor agree to the Terms, Covenants, and Conditions of Contract attached hereto.

Owner:

By: 

Name & Title: \_\_\_\_\_

Date: 4/11/07

Deep Creek, Inc.

By: 

Name & Title: William R. Story, President

Date: April 10, 2007

**TERMS, COVENANTS, AND CONDITIONS  
OF CONTRACT**

Owner and Contractor further agree to the following:

1. **Cooperation:** Owner and Contractor shall cooperate in scheduling and performing the work under this Contract. Owner shall promptly make available to Contractor all information which becomes available to it and which affects this Contract. Owner shall not give orders to employees of Contractors, but will communicate only with the designated representative of Contractor.
2. **Compliance with Laws:** Contractor shall comply with all laws, ordinances, rules, regulations, and orders of public authorities concerning the project. Owner shall secure and pay for all permits necessary for Contractor to work on the Project.
3. **Hazardous Material:** Owner represents and warrants that it has no knowledge of the existence of any hazardous on the project. If Contractor encounters on the project materials believed to be a hazardous, including, but not limited to oil, asbestos, PCBs, Contractor will stop work, notify Owner of such material, and resume work only upon the removal of such hazardous materials, whatever they may be, from the project.
4. **Clean-up:** Contractor agrees to keep the project site free from the accumulation of waste, debris, and rubbish caused by performance by Contractor of this Contract.
5. **Quality, Warranty:** All materials and equipment furnished by Contractor under this Contract will be of good quality and new unless otherwise agreed. The work of Contractor shall be free from defects and will conform to the requirements of the Contract. Contractor shall correct any work that fails to conform to the requirements of the Contract Documents that appears during the construction periods, and shall remedy any defect in materials or workmanship which appear within one year from the date of completion of this Contract. Contractor's warranties hereunder, however, exclude remedy for damage or defect resulting from abuse, modifications, improper maintenance, improper operation or normal wear and tear, ground shifting or subsidence.
6. **Changes in Work:** The Owner may make changes in the project. In such event, and upon the request of Owner, Contractor agrees it will make changes in the scope of its work in conformance with Owner's requested changes; provided that such change is consistent with the general scope of this contract. The parties shall sign a written change order reflecting the change/modification in work and the resulting adjustment of the contract price, whether it be an increase or a decrease, and such writing shall be completed before Contractor begins the work involved with the change.
7. **Progress Payments:** Owner shall pay Contractor the contract sum in progress payments. Contractor shall make application for each progress payment on the 15th day of each month on the basis of the Work installed during the previous calendar month, as measured by the Schedule of Values, including Change Orders. Owner shall pay to the Contractor 100% of the Work completed, less the aggregate of payments previously paid, within 10 days after receipt of Contractor's invoice. If Contractor does not receive such payment from the Owner for any cause not the fault of the Contractor, the Owner shall pay such progress payment to Contractor on demand.
8. **Final Payment:** Final payment (the entire unpaid balance) shall be due to Contractor when the Contractor's work is fully performed pursuant to the Contract Documents, and upon issuance of the Certificate of Final Completion by the governing agency, if required, and the receipt of invoice for Final Payment by the Owner from the Contractor.
9. **Payment of Retainage:** Retainage shall be reduced to 2 ½ % upon Substantial Completion of the Work, which shall be defined as when the Owner, Contractor and Project Engineer considers the entire work ready for its intended use. The final Retainage shall be paid within 30 days of final acceptance of the Work by the Owner, or the governing agency, if required.
10. **Insurance:** Contractor shall provide and maintain at all times during the performance of this Contract, worker's compensation and employers' liability insurance for protection of Contractor's employees, as required by law; insurance covering public liability, personal injury or death and property damage (including, but not limited to, all work performance and operation of automobiles, trucks, and other vehicles) in amounts of not less than \$1,000,000/\$2,000,000 per occurrence against liability for damages because of injuries, including death, suffered by persons other than employees of Contractor and in an amount of not less than \$100,000 per occurrence

against liability for damages to property. If additional types of insurance or higher insurance policy limits are required by the Owner, then Contractor shall purchase and maintain the additional type or types of insurance or shall increase policy limits as required by the Owner. Such additional insurance costs shall be considered a Change Order, and shall be paid by the Owner to the Contractor.

11. Indemnification: Contractor shall indemnify, hold harmless, and defend Owner and all of its officers, agents, employees, shareholders, and insurers, if any, from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of Contractor's work under this Contract or Contractor's failure to perform any term, covenant or condition of this Contract. Contractor's obligation to pay damages and its indemnification apply only to the extent the Contractor is found to have directly caused delay, loss or damage, and shall not apply to delays, damage or loss caused by others or merely alleged to have been caused by Contractor.

Owner shall indemnify, hold harmless, and defend Contractor and its officers, agents, employees, shareholders, and insurers from and against all claims, damages, losses and expenses, including but not limited to attorneys fees, arising out of or resulting from the performance of Owner, and all other such Contractors under the control of the Owner, or Owner's failure to perform under the Contract or the failure of Owner or any of the other Contractors on the project to perform any legal or professional duty arising out of or relating to the project.

12. Arbitration / Disputes:

(a) All controversies, claims, disputes or disagreements arising out of, or relating to, this Contract or the breach thereof, shall be submitted to binding arbitration, unless otherwise specified by the Contract Documents. The arbitration shall be conducted in the same manner and under the same procedure as provided in the Contract Documents with respect to disputes between Owner and Contractor, except that a decision by the Owner's Authorized Agent shall not be a condition precedent to arbitration. If the Contract Documents do not provide for arbitration or fail to specify the manner and procedure for arbitration, the arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, unless the parties mutually agree otherwise in writing. Arbitration, as provided for herein, shall be conducted at a location designated by Contractor. The agreement to arbitrate contained herein shall be specifically enforceable.

(b) The award rendered in arbitration shall be final, and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

(c) If any action or proceeding in court or in arbitration is brought to enforce this Contract, the prevailing party therein shall be entitled to an award for all expenses and costs incurred in the action or proceeding, including, but not limited to, reasonable attorneys' fees.

(d) It is mutually agreed that the decision of the arbitration shall be a condition precedent to any right of legal action that either party may have against the other.

13. Miscellaneous:

(a) This Contract represents the entire and integrated agreement of the parties and supersedes prior negotiations, representations, and agreements.

(b) This Contract may be signed in counterparts.

(c) This Agreement shall inure to the benefit of and be binding upon each party's successors, legal representatives, and assigns.

OWNER:

BY:

Title:

Date:



4/11/07

CONTRACTOR:

DEEP CREEK, INC.

BY:

Name & Title: William R. Story, President

Date: April 10, 2007



# Deep Creek Inc.

840 23 1/2 Rd  
Grand Junction, CO 81505  
Phone: 970 244 8768  
**Fax: 970-256-7584**

# Fax

<b>To:</b> Pat Edwards	<b>From:</b> Carrie
<b>Fax:</b> 241-4178	<b>Date:</b> 6/6/06
<b>Attn:</b> Pat	<b>Pages:</b> 5
<b>Re:</b> Multi-Chem	<b>CC:</b>

Urgent     For Review     Please Comment     Please Reply    X FYI

**•Comments:**

*Gave check to Babbie  
on 6/8/07, w/ form  
emailed to her also.*

# Improvements Guarantee

<b>X</b>	<b>Deposit</b>		<b>Request to Release Funds</b>
<b>Date</b>	June 8, 2007		
<b>File No.</b>	CUP-2006-265		
<b>Purpose</b>	Guarantee for landscaping		
<b>Project Name</b>	Rocky Mtn. Production Services dba Multi-Chem		
<b>Payee</b>	Rocky Mountain Production Services		
<b>Mailing Address</b>	716 Arrowest Road Suite B Grand Junction, CO 81505-0458		
<b>ACCOUNTING INFORMATION</b>			
	<i>Amount</i>	<i>Receipt/PA No.</i>	
<b>DEPOSIT</b>	<b>\$49,834.00</b>		
<b>Refund Amount</b>	<b>\$0.00</b>		
<b>Refund Amount</b>	<b>\$0.00</b>		
<b>Refund Amount</b>	<b>\$0.00</b>		
<b>BALANCE</b>	<b>\$0.00</b>		
<b>Fund-Account No.</b>	207-21090		
<b>Planner's Name</b>	Lori V. Bowers		

# Improvements Guarantee

	<b>Deposit</b>	<b>X</b>	<b>Request to Release Funds</b>
<b>Date</b>	July 12, 2007		
<b>File No.</b>	CUP-2006-265		
<b>Purpose</b>	Guarantee for landscaping		
<b>Project Name</b>	Rocky Mtn. Production Services dba Multi-Chem		
<b>Payee</b>	Rocky Mountain Production Services		
<b>Mailing Address</b>	716 Arrowest Road Suite B Grand Junction, CO 81505-0458		
<b>ACCOUNTING INFORMATION</b>			
	<i>Amount</i>	<i>Receipt/PA No.</i>	
<b>DEPOSIT</b>	\$49,834.00		
<b>Refund Amount</b>	\$49,834.00		
<b>Refund Amount</b>	\$0.00		
<b>Refund Amount</b>	\$0.00		
<b>BALANCE</b>	\$0.00		
<b>Fund-Account No.</b>	207-21090		
<b>Planner's Name</b>	Lori V. Bowers		

*Sent to Batters on 7/12/07*